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FEDERAL COMMUNICATIONS COMMISSION  
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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of :

Computer III Remand Proceedings:  
Bell Operating Company Safeguards  
and Tier 1 Local Exchange Company  
Safeguards

Application of Open Network  
Architecture and Nondiscrimination  
Safeguards to GTE Corporation

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) CC Docket No. 96-268  
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) CC Docket No. 92-256  
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COMMENTS OF CENTEX TELEMAGEMENT, INC.  
ON CUSTOMER PROPRIETARY NETWORK INFORMATION

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## SUMMARY

The Commission's present rules governing use of CPNI by the BOCs and certain other LECs are now clearly insufficient, in today's marketplace where customers increasingly explore alternative telecommunication arrangements, to achieve the best balance between customers' privacy interests, competitive equity, and efficiency. As a result of the increasing consumer choice in telecommunications markets, opportunities for LECs' use of CPNI in ways that disadvantage their rivals are likewise increasing. The CPNI regulations unjustifiably leave small business and residential customers almost entirely unprotected, apply differentially to the BOCs and their rivals, and exempt all independent LECs other than GTE. As a result, the Commission's CPNI rules are inadequate to ensure that BOCs and other LECs do not abuse proprietary customer information, obtained solely as a result of their continuing monopoly status, to impede the development of innovative alternatives for end users, particularly small business customers.

CENTEX Telemanagement, a pioneer of the telemanagement service concept, unfortunately has extensive experience with BOC and other LEC abuse of CPNI in connection with its small and medium-sized business clients. CENTEX Telemanagement has been subjected to a systematic campaign by at least one BOC and to targeted action by a major independent LEC to use CPNI to identify current and potential Centex clients and to discourage them from using Centex's management services. These episodes, detailed in these Comments, demonstrate that the Commission should modify the CPNI rules to expand the meager protections accorded small business and residential customers, and should apply the same strict conditions against LECs use of all CPNI that the Commission recently applied to interexchange carriers' (and other non-LEC providers') use of more limited BNA information.

In specific, the Commission's rules should be extended in several ways to ensure that LECs do not unfairly use customer information acquired as part of their local monopoly bottlenecks:

- CPNI rules should govern all service providers (including independent LECs), not just the BOCs and GTE, and should protect all users of local exchange services, not just enhanced service customers.
- CPNI rules should expressly recognize that CPNI belongs to the subscriber (or "customer of record"), not to the LEC or any other service provider, to protect customers' privacy expectations.
- Prior customer authorization for CPNI release should be required for all LEC customers regardless of size or usage volume, not just LEC customers with more than 20 lines.
- LECs and their affiliates should have no more right to use CPNI, including BNA information, for marketing and sales purposes than interexchange carriers and companies not affiliated with a LEC.

These changes in the CPNI rules are especially vital during the ongoing transition to increased customer choice in telecommunications markets because LEC misuse of CPNI can prevent end users' objective consideration of service alternatives and delay the realization of consumer benefits from competitive entry. With these revisions, the Commission's rules would finally protect the legitimate privacy expectations of all LEC customers and safeguard competition beyond the narrow sphere of enhanced services.

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Bell Operating Company Safeguards	)	
and Tier 1 Local Exchange Company	)	
Safeguards	)	
	)	
Application of Open Network	)	CC Docket No. <u>92-256</u>
Architecture and Nondiscrimination	)	
Safeguards to GTE Corporation	)	
	)	

**COMMENTS OF CENTEX TELEMAGEMENT, INC.  
ON CUSTOMER PROPRIETARY NETWORK INFORMATION**

CENTEX Telemanagement, Inc. ("CENTEX Telemanagement"), by its attorneys, hereby responds to the Commission's March 10, 1994 Public Notice requesting comment on whether changes in the rules governing use of customer proprietary network information ("CPNI") by the Bell Operating Companies ("BOCs") and certain other local exchange carriers ("LECs") are necessary in light of the ongoing competitive transformation of the interstate telecommunications industry.<sup>1</sup>

**INTRODUCTION AND SUMMARY**

The Commission's present CPNI rules are now clearly insufficient, in today's increasingly competitive marketplace, to meet the Commission's settled policy of "achiev[ing] the best balance between customer's privacy interests, competitive equity, and efficiency." Notice at 1. The CPNI regulations unjustifiably leave small business and residential customers almost entirely unprotected, apply differentially to

<sup>1</sup> Additional Comment Sought on Rules Governing Telephone Companies' Use of Customer Proprietary Network Information, Public Notice, FCC 94-63 (released March 10, 1994) ("Notice").

the BOCs and their rivals, and exempt all independent LECs other than GTE Corporation ("GTE"). As a result, the Commission's CPNI rules are inadequate to ensure that BOCs and other LECs do not abuse proprietary customer information, obtained solely as a result of their continuing monopoly status, to impede the development of innovative alternatives for end users.

CENTEX Telemanagement, a pioneer of the telemanagement service concept, unfortunately has extensive experience with BOC and other LEC abuse of CPNI in connection with its small and medium-sized business clients. CENTEX Telemanagement's clients have been repeated victims of LEC use of CPNI to deter consumer choice and violate customer privacy by exploiting loopholes in the current CPNI regime, for instance by utilizing CPNI to target CENTEX Telemanagement clients for "counter-marketing" efforts and other anticompetitive behavior. These episodes, detailed in Section A(1) of these comments, demonstrate that the Commission should modify the CPNI rules to expand the meager protections accorded small business and residential customers, and to apply the same strict conditions against CPNI use to LECs that the Commission recently adopted for interexchange carriers and other non-LEC providers.

In specific, the Commission's rules should be extended in several ways to ensure that LECs do not unfairly use customer information acquired as part of their local monopoly bottlenecks:

- CPNI rules should govern all service providers (including independent LECs), not just the BOCs and GTE, and should protect all users of local exchange services, not just enhanced service customers.

- In order to protect customers' privacy expectations, the CPNI rules should expressly recognize that CPNI belongs to the subscriber (or "customer of record"), not to the LEC or any other service provider.

- Prior customer authorization for CPNI release—currently required only for local exchange customers with more than 20 lines—should be extended to all LEC customers, regardless of size or usage volume.

- LECs and their affiliates should have no more right to use CPNI, including billing name and address (“BNA”) information, for marketing and sales purposes than is permitted for interexchange carriers and companies not affiliated with a LEC.

As a result of the increasing introduction of competition into monopoly telecommunications markets, opportunities for anticompetitive LEC use of CPNI are likewise increasing. Commission vigilance is especially vital in this context because LEC misuse of CPNI can prevent end users’ objective consideration of service alternatives and delay the realization of consumer benefits from competitive entry. With the revisions, proposed above, the Commission’s CPNI rules would finally protect the legitimate privacy expectations of all LEC customers and safeguard customer choice beyond the narrow sphere of enhanced services. In the ongoing transition to increasing customer choice in the telecommunications marketplace, there is no longer any justification for allowing LEC use of CPNI that is prohibited for LEC rivals, or for drawing arbitrary size limitations to the degree of privacy protection accorded LEC subscribers.

### BACKGROUND

CENTEX Telemanagement provides comprehensive telecommunications management services to more than 11,000 small and medium-sized business in nine states. CENTEX Telemanagement’s goal has been to ensure that small businesses—most of whom have fewer than 20 telephone lines—can take advantage of the same sophisticated telecommunications and management services available to larger telephone customers.

CENTEX Telemanagement serves as the single point of contact for smaller businesses, which face increasing complexity and confusion resulting from the expanding number of local and long distance telecommunications options. CENTEX analyzes the telecommunications needs of its members (or clients) and selects the best mix of services from various third-party providers—including Centrex services provided by the LECs—to be shared by each member. By sharing local, toll, and interstate services, CENTEX Telemanagement clients can achieve otherwise unavailable economies of scale, obtain features and services (such as least-cost routing, voicemail, accounting codes, and 24-hour emergency assistance) frequently offered only to larger customers, and more efficiently select the optimal telecommunications service options to meet their specific business needs.<sup>2</sup> Thus, CENTEX Telemanagement aptly illustrates the Commission's long-recognized economic benefits of sharing, including efficiency, innovation, and, in particular, "entry by firms specializing in telecommunications management services which can offer services previously unavailable."<sup>3</sup>

CENTEX Telemanagement's experience with LEC abuse of its clients' CPNI also illustrates, however, that the CPNI rules developed by the Commission—even as modified over the past several years—are no longer sufficient to assure the protection either of free customer choice or customer privacy. The Commission's CPNI rules, first adopted in 1987, are focused principally on enhanced service providers

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<sup>2</sup> In exchange for a management fee, CENTEX Telemanagement provides a broad range of sophisticated management services, such as multi-vendor coordination and management, equipment analysis, call routing optimization and accounting, and detailed management reports.

<sup>3</sup> Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services and Facilities, Second Report and Order, 83 F.C.C.2d 167, 178 (1980). The Commission eliminated interstate tariff restrictions against sharing and resale in 1976, recognizing that sharing promotes efficient utilization of existing communications capacity, encourages improvements in marketing of communications services, broadens the variety of communications offerings available, and enhances the research, development, and implementation of communications technology. Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services and Facilities, Report and Order, 60 F.C.C. 2d 261, 302 (1976).



("ESPs"). Under these rules, the BOCs' enhanced services and customer premises equipment ("CPE") marketing personnel "are generally allowed to make use of CPNI without prior customer authorization." Notice at 1. While ESPs must always obtain prior customer authorization in order to access CPNI, BOC enhanced service and CPE affiliates are required to secure prior customer authorization only in order to access CPNI of customers with more than 20 lines.<sup>4</sup> Furthermore, LEC internal use of CPNI, for instance use of billing name and address information ("BNA") for marketing of competitive exchange and access services, is permitted without restriction. In contrast, in June 1993 the Commission amended its Rules to prohibit interstate common carriers, including ESPs and competitive access providers ("CAPs"), from using BNA information obtained from the LECs—one part of CPNI—for "any purpose other than billing customers . . . and collecting amounts due," expressly in order to prevent use of BNA "for marketing purposes."<sup>5</sup>

### DISCUSSION

The Commission's CPNI rules are too narrow to achieve their objective in the context of today's rapidly changing telecommunications marketplace. The Commission has long recognized that "unrestricted access to CPNI could give the LECs an unfair advantage over competitors and would not be consistent with the wishes of some network services customers who may want their CPNI treated confidentially."<sup>6</sup> Unfortunately, the existing CPNI rules fall far short of eliminating the LECs' advantages, and indeed exacerbate the competitive disparities associated with the in-

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<sup>4</sup> Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards, 6 FCC Rcd. 7571, 7606-14 (1991) ("Computer III Remand Order").

<sup>5</sup> 47 C.F.R. § 64.1201(c); see Policies and Rules Concerning Validation and Billing Information for Joint Use Calling Cards, Second Report and Order, 8 FCC Rcd. 4478, 4484-85 (1993) ("BNA Order"), Second Order on Reconsideration, 8 FCC Rcd. 8798, 8805-06 (1993).

<sup>6</sup> Furnishing of Customer Premises Equipment by the Bell Operating Telephone Companies and the Independent Telephone Companies, Report and Order, 2 FCC Rcd. 143, 151 (1987).

roduction of competition for interstate access, intraLATA, and, increasingly, local exchange services. CPNI protection should be accorded to all LEC customers, of all size, and should preclude the LEC itself—not just LEC enhanced services affiliates—from utilizing CPNI for marketing, sales, and other competitive purposes.

A. LEC Marketing Use of CPNI Constitutes Unfair Exploitation of the LECs' Local Exchange Monopolies

The Commission's differential treatment of LECs and their competitors in terms of the right to use BNA and other CPNI information for marketing and competitive purposes is premised, in large part, on the Commission's perception of marketplace efficiency, for which it favors "integrated marketing and sales" by the BOCs.<sup>7</sup> This basic assumption requires fundamental reconsideration in the context of the increasingly competitive telecommunications industry. Clearly, LECs obtain and retain access to CPNI by virtue of their position as providers of bottleneck monopoly local exchange services. In real terms, customers simply have nowhere else to go to obtain local telephone service, and are compelled to give the LECs CPNI in order to subscribe to basic exchange services.

Preferential access to CPNI gives LECs and their affiliates tremendous competitive advantages. The Commission has long recognized that a wealth of competitively vital information exists in or can be derived from CPNI, including "sensitive marketing strategies, expansion plans, innovative uses of telecommunications, customer lists, costs, and other confidential business information."<sup>8</sup> CPNI can be used, among other things, to:

- (1) identify new customers before anyone else and to contact those customers before they realize there are competitive alternatives, (2) to target the customers of competing [providers]; (3) to tailor their marketing presentations based

<sup>7</sup> E.g., Computer III Remand Order, 6 FCC Rcd. at 7610.

<sup>8</sup> Id. at 7606.

on information about customers' network usage; and (4) to identify the appropriate customer contact.

See, e.g., Computer III Remand Order, 6 FCC Rcd. at 7606.

Thus, potential customers of LEC competitors are particularly vulnerable to exploitation, because LEC CPNI misuse can prevent their objective consideration of service alternatives and delay the realization of consumer benefits from competitive entry. Indeed, CPNI is particularly useful in nascent markets, where initial LEC advantages in locating and signing up customers can create a tremendous competitive advantage. And because CPNI resides in LEC computers, detecting specific LEC uses of CPNI for anticompetitive purposes can be difficult, if not impossible, leaving victims without any effective litigation or other legal remedy.

Plainly, when the local exchange bottleneck eventually disappears, there would no longer be any legitimate reason for treating LECs and non-LECs differently in their rights to obtain and use CPNI. Until then, however, permitting BOCs to use CPNI for marketing of CPE and basic services is inconsistent with the development of competitive local exchange and access markets. In the interim, LEC preferential use of CPNI for marketing impedes the development of innovative and competitive telecommunication services, including intraLATA competition, competitive access services, and customer sharing of services to achieve economies of scale and telemanagement.

Neither of the rationales sometimes used to justify differential treatment of LECs and non-LECs as to use of CPNI makes policy sense in light of the LECs' continued bottleneck monopoly power in large segments of the exchange marketplace, the precise area where CPNI abuse is most harmful competitively. First, LEC access to CPNI is fundamentally "different from an unregulated company's access to its customer records," because customers of unregulated companies, unlike captive LEC end users, are not required to purchase products and services and have a wide range of choices in

the suppliers of services they do choose to buy.<sup>9</sup> Second, as amply illustrated in the next section, customer privacy concerns are central to “internal BOC access to CPNI,” because the development of alternatives for access and basic exchange services, such as Centrex, makes LEC misuse of CPNI an invasion of customer choice and a barrier to customer consideration of non-LEC service alternatives.<sup>10</sup> CPNI represents private and ordinarily confidential information that belongs to the subscriber, not the LEC or any other service provider.

1. CENTEX Telemanagement’s Experience Demonstrates the Severe Privacy and Economic Damages Caused by Unlimited LEC Access to Exchange Customers’ CPNI

The ineffectiveness of the Commission’s narrow CPNI rules is demonstrated by CENTEX Telemanagement’s experience with LEC abuse of its clients’ own CPNI. These abuses have typically taken several forms: (1) LEC use of requests for client CPNI by CENTEX Telemanagement as a “trigger” for identifying marketing opportunities; (2) LEC use of existing CPNI, including presubscription records, BNA, and service options, to tailor specific sales presentations to existing CENTEX Telemanagement members; and (3) transfer by LECs of CPNI from their basic exchange operations to affiliates that compete with CENTEX Telemanagement in the telemanagement services market. All of these uses of CPNI contravene the legitimate privacy

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<sup>9</sup> *Id.* at 7608. Thus, LEC use of CPNI for sales and marketing purposes is not at all the same as use of customer lists by banks, credit card companies, and other competitive firms. While many competitive firms allow customers to prevent disclosure of their information to third-parties, they frequently use the information for their own, internal marketing purposes, for instance in offering term insurance to credit card holders. In those circumstances, though, it is clear that consumers have free choice among hundreds of competing providers, and can easily switch to another firm if they desire to preclude “internal” marketing use of their information. Until local exchange telephone customers have that same competitive choice, Commission regulation must substitute for the market by precluding LECs from using CPNI for “internal” sales and marketing purposes.

<sup>10</sup> *Id.* at 7611 n.159. As agent and customer of record for its members’ shared LEC Centrex services, CENTEX Telemanagement is considered an end user under the LEC exchange tariffs, and is thus entitled to the same CPNI protections accorded directly to LEC end user customers.

expectations of CENTEX Telemanagement members and allow the anticompetitive exploitation of the LECs' local exchange monopoly power.

Although not all the LECs have engaged in these practices, CENTEX Telemanagement has been subjected to a systematic campaign by at least one BOC and to targeted action by a major independent LEC to use CPNI to identify current and potential CENTEX members and to discourage customers from using CENTEX's management services. For instance, one BOC developed a special task force devoted to targeting CENTEX Telemanagement members—all of whom subscribe to shared BOC Centrex service—from its CPNI records in order "recover" Centrex usage and to "counter-sell" business exchange and other LEC services directly to the members, without their knowledge or authorization. In the absence of a regulatory prohibition on CPNI use, this BOC was able to conduct detailed, computer-assisted CPNI searches to identify and market clients of CENTEX Telemanagement, for instance by identifying who the clients' lines were billed to, whether the member had subscribed to an interexchange carrier, the clients' usage data and calling patterns, and whether the clients subscribed to particular Centrex service features.

In this way, whenever CENTEX Telemanagement placed an authorized request for CPNI on a prospective member in order to recommend its best telecommunications service configuration, the BOC was positioned immediately to send a sales team to the account, even before the potential member had the opportunity to make a decision.<sup>11</sup> The task force searched CPNI constantly, often daily, to locate recent information on new BOC customer orders, service changes, usage drops, PIC changes, or any other customer calls suggesting that a BOC customer changed some form of Centrex service indicating a potential relationship with CENTEX Telemanagement. None of this information, of course, was affirmatively selected by the customers for

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<sup>11</sup> Of course, customer-authorized, customer-specific requests for CPNI should be considered a type of CPNI itself, and subject to the same protections as other customer proprietary information.

transmission to the BOC's sales and marketing personnel, nor had the BOC customers anticipated that, by seeking telemanagement services from CENTEX, their proprietary service information would be used to attempt to dissuade them from subscribing to the shared Centrex services managed by CENTEX.<sup>12</sup>

A quite different but equally anticompetitive strategy has been employed by another LEC—in this instance, an independent exchange carrier not subject to the Commission's CPNI rules—to frustrate CENTEX Telemanagement's efforts to develop a Centrex-based sharing business in the LEC's state. This company has actively used CPNI from CENTEX Telemanagement members not only to develop sales leads and "target" LEC customers who may consider becoming CENTEX Telemanagement clients, but also to fashion its own strategic business and operational plan for entry into the telemanagement business. Thus, in this instance the LEC is not abusing CPNI for internal marketing purposes, but instead transferring that information to a non-ESP affiliate that competes directly with CENTEX.

Whether or not this conduct violates state tort law, unfair business practice statutes, or other legal doctrines, it is clear that LEC ability to access, manipulate, segregate, and exploit CPNI has adverse consequences both on CENTEX Telemanagement and the privacy expectations of its existing and potential members. There is no good reason why any LEC subscriber should not be free to make whatever arrangements they want for obtaining local exchange services, whether by acting through a telemanager or purchasing services from a CAP or other common carrier provider,

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<sup>12</sup> Although CENTEX Telemanagement members use shared Centrex services, the LECs often have a financial incentive to discourage customer relations with CENTEX Telemanagement in favor of higher-priced basic exchange business lines. Generally, state commissions price Centrex services closer to cost than ordinary business lines, on the ground that Centrex service competes with PBXs. Thus, despite the fact CENTEX Telemanagement members continue to use LEC exchange services, LECs frequently perceive CENTEX as a financial "competitor." Much as the BOCs have traditionally sought to exploit their monopoly power against perceived competitive threats, they now use CPNI to avoid so-called "migration" of small business clients, through sharing, from highly profitable ordinary business line services to more competitively priced Centrex services.

without fearing that it will be inundated with LEC efforts to “recover” the customer. Moreover, CENTEX Telemanagement’s experiences demonstrate that, by allowing LECs to use CPNI in ways prohibited to ESPs and all other interstate providers, the Commission’s rules encourage LEC efforts to impede marketplace provision of the precise kind of new and innovative services—like the shared telemanagement services offered by CENTEX—the Commission has for decades sought to foster.

2. CPNI Protections Should Apply to All Telecommunications Services, Not Just Enhanced Services and CPE

The Commission developed its CPNI rules, as an adjunct of its contemplated removal of structural separation requirements for BOC provision of CPE and enhanced services in the Computer III rulemaking, principally to preserve fair marketplace opportunities for ESPs that compete with the LECs’ own enhanced service operations. Today, however, the local telecommunications market has changed so that the LECs compete not only to provide enhanced services, but some basic services as well. The Commission’s CPNI rules therefore should be extended to conform to the emerging competitive environment in which, as the scope of competition increases, the LECs will increasingly have opportunities for anticompetitive use of CPNI in segments of the basic exchange market.

Although the LECs still retain a monopoly for local exchange service, various niches have developed where competition, albeit in nascent stages, has emerged. For example, CAPs have begun to offer special access and local transport services, most states have permitted entry into at least some parts of the intraLATA toll market, and public utility commissions are steadily increasing the number of basic exchange services for which resale, and in some instances facilities-based, competition may be authorized. In this environment, CPNI rules that were adequate in 1987 for regulating the interface between a BOC and its enhanced services affiliate can plainly no

longer function effectively if they exempt entirely the LECs' internal use of CPNI for competitive sales and marketing purposes.

The abuse of CPNI against CENTEX Telemanagement vividly demonstrates the need for the Commission to expand and strengthen its rules on LEC use of CPNI to provide a level playing field for the development of innovative and emerging telecommunications alternatives. Because some LECs view CENTEX Telemanagement as a "competitor," they attempt to exploit CPNI to deter their subscribers from dealing with CENTEX and to steal existing CENTEX Telemanagement members. Ironically, several LECs have engaged in this type of conduct—despite the fact that CENTEX Telemanagement clients remain LEC subscribers and share LEC exchange service—because LEC rate designs create a financial incentive to avoid "migration" of customers to Centrex service. Thus, even where the LECs themselves are the service providers, they have substantial incentives to exploit CPNI in order to maintain "account control" and deter their customers from subscribing to more efficient (but less-profitable) LEC basic services.

Consequently, in order to reflect the significant changes that have taken place in the telecommunications marketplace, the Commission should modify the foundation of its CPNI rules by expanding them beyond the narrow reach of Computer III. In a marketplace characterized by increasing competitive alternatives, privacy interests, competitive equity, and efficiency all dictate that proprietary information obtained by the LECs in their role as monopoly provider of exchange services should not be used—by the LEC itself, as well as LEC enhanced service and CPE affiliates—for sales and marketing purposes. In this context, a "level playing field" must mean that all service providers, LECs and non-LECs, should be governed by a single set of CPNI



protections. As discussed below, these protections should extend to all telephone subscribers, not merely the largest LEC business customers.<sup>13</sup>

B. The Commission Should Protect Small Business Telephone Subscribers by Extending Its Prior Authorization Requirement to All Businesses, Not Only Those With 20 or More Lines

In its 1991 Computer III Remand Proceeding, the Commission crafted a quantitative rule for determining when businesses would be protected from the BOCs' use of customer CPNI without prior authorization. Modifying its earlier conclusion that LEC enhanced services affiliates could always obtain CPNI unilaterally, without customer approval, the Commission required prior customer authorization in order for the LEC to release CPNI to its enhanced services marketing personnel if the subscriber has more than 20 exchange telephone lines. The Commission concluded that this approach would "preserve the benefits of our current rules for the further development of enhanced services for the mass market, while providing additional safeguards with respect to those customers whose CPNI might provide the greatest competitive advantage to the BOCs and raises competitive issues for the customers themselves."<sup>14</sup>

The Commission substantially overestimated the benefits that a 20-line rule would provide for competition in the marketplace. In fact, such a limit discourages innovation by companies like CENTEX Telemanagement that serve the interests of small businesses. Small businesses for years have been subject to higher LEC exchange prices, relatively greater rate design requirements for generation of "contribution," reduced choice among options, features, and sophisticated LEC services, and in general

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<sup>13</sup> There is also no continued justification for applying CPNI rules only to the BOCs and GTE. Although the ESP rules were designed as a non-structural safeguard for BOC/ESP relations, the CPNI rules actually address privacy and competitive concerns that apply regardless of the size of the local exchange carrier. Because the LEC acquires and retains CPNI as a result of its local exchange monopoly, there is no functional or policy difference among differently sized LECs as to the source of the information or, correspondingly, the correct scope of their right to use CPNI. Moreover, because the CPNI rules impose no financial or economic costs on LECs, there is no special regulatory burden that justifies creating an exception for smaller exchange carriers.

<sup>14</sup> Computer III Remand Order, 6 FCC Rcd. at 7612.

the absence of significant competitive alternatives. For instance, most small business clients of CENTEX Telemanagement cannot individually make economic use of Centrex service and lack the lines and usage volume requirements to justify purchase of PBX-based equipment alternatives. Contrary to the Commission's assumption, smaller LEC customers do not need special CPNI disclosures in order to encourage integrated LEC marketing activities, but rather less LEC use of CPNI in order to take advantage of telemanagement, sharing, and related alternatives that LECs have an incentive to conceal from or mislead their customers.<sup>15</sup>

Small businesses frequently use fewer than 20 exchange lines, and under the existing rules their CPNI is therefore readily available to the LECs for marketing competitive services unrelated to the provision of local service. This dichotomy means that CPNI is protected for the largest of business customers, for whom competitive facilities-based common carriers already offer substantial service and price options, but unprotected for smaller business and residential customers, for whom competition is just now beginning to emerge and who are most in need of objective, non-LEC information about services, prices, and feature options. By allowing LECs to "target" marketing activities toward smaller business and residential customers whose demand is most inelastic and whose rates generate the most LEC profits, the Commission has created perverse incentives encouraging LECs to exercise greater monopoly control over customers most in need of competitive alternatives.

Finally, even if the Commission was correct three years ago that "mass market" provision of enhanced services justified more integrated LEC sales and marketing activities, the rapidly changing nature of the telecommunications industry counsels strongly for repeal of the arbitrary 20-line rule. New technologies such as PCS and satellite-delivered telephone services are on the verge of creating even newer forms

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<sup>15</sup> Id.

of competition for the LECs. And, as the Notice recognizes, LECs are increasingly creating partnerships, affiliations, and relationships with non-telephone firms in cable television, newspaper, and other industries. In these circumstances, as the pace of marketplace changes steadily increases, there is an affirmative competitive reason not to continue an artificial CPNI-based competitive advantage for LECs.

To the extent it was based on the rationale that small business and residential subscribers have different privacy expectations as to CPNI than larger LEC customers, the Commission's 20-line rule lacks any validity. Proprietary information as to telephone subscription, usage, and services is a matter completely indifferent to customer size. A small business can (and ordinarily does) view its telephone data just as confidentially as does a larger business. Thus, the only legitimate response to the Commission's inquiry as to "residential and small-business customers' CPNI-related privacy expectations," Notice at 3, is that customer privacy should be protected for all LEC customers, regardless of size, usage volume, number of telephone lines, or any other quantitative factor. Privacy does not and should not increase just because some LEC customers need to use their telephones more than others.

C. The Same Rules Prohibiting Marketing and Sales Use of BNA and other CPNI Should Govern LECs in the Same Manner as Applied to Interexchange Carriers, CAPs, and other Service Providers

While the Notice appropriately questions whether recent LEC alliances, acquisitions, and mergers raise additional privacy and competitive concerns requiring change in its CPNI rules, the Commission appears not to have recognized that its related decisions on permissible use of BNA have already created an asymmetric regulatory scheme that harms both competition and consumer privacy.

In June 1993, as part of its examination of calling card validation practices, the Commission promulgated rules on billing name and address information, one subset of CPNI, that require local telephone companies to disclose a subscriber's BNA to interexchange carriers, operator services providers, CAPs, and other interstate carriers

for use in billing and collection.<sup>16</sup> In requiring LECs to make these disclosures, however, the Commission also prohibited use of BNA information by recipients for any purpose other than billing and collection, expressing great concern about use of BNA for marketing and sales purposes.<sup>17</sup> The Commission has emphasized that the disclosure of BNA raises significant privacy concerns when it is used for non-billing purposes.<sup>18</sup> The Commission found substantial evidence that end users do not expect their BNA information to be released except for billing of line-based calling cards, concluded that customers "give implied consent" to such BNA disclosure when they used their telephone calling cards,<sup>19</sup> and emphasized that "the privacy concerns similar to those we have found for CPNI may arise if BNA is used for non-billing purposes."<sup>20</sup>

The Commission's BNA provisions appropriately balance the need for disclosure of CPNI information by the BOCs to third parties. By safeguarding subscribers' information and securing BNA information from third-party marketing tactics, the Commission's BNA rules promote competition and privacy. However, because the very same privacy concerns that exist for the disclosure and use of BNA may be even greater for CPNI, due to the sensitive business information within CPNI and the absence of any "implied consent" by customers for its dissemination for sales purposes, the Commission should prohibit the use of all CPNI, including BNA, for marketing or sales purposes by all interstate services providers, both LECs and non-LECs.

In a telecommunications marketplace in which LECs compete, in whole or in part, with each of the type of interstate service providers that the Commission bars

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<sup>16</sup> 47 C.F.R. § 64.1201(c). See note 5 above.

<sup>17</sup> See Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, Second Report and Order, 8 FCC Rcd. 4478 (1993).

<sup>18</sup> Id. at 4484.

<sup>19</sup> Id.

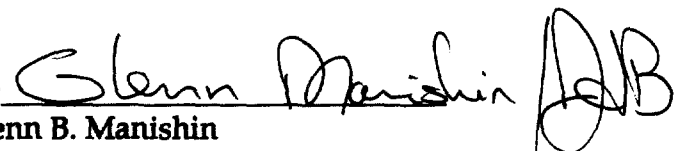
<sup>20</sup> Id. at 4483.

from using BNA for sales and marketing purposes, applying a differential standard to LEC use of BNA and other CPNI for marketing and sales can no longer be justified. The same CPNI rules, and the same privacy protections, should apply to all competitors, including LECs.

### CONCLUSION

In the ongoing transition to an effectively competitive local exchange market, there is no longer any justification for allowing LEC use of CPNI that is prohibited for LEC competitors, or for drawing arbitrary size limitations to the degree of privacy protection accorded LEC subscribers. The Commission should therefore modify the CPNI rules to extend prior-authorization protection to small business and residential customers with fewer than 20 telephone lines, apply the same strict conditions against CPNI marketing and sales use to LECs that the Commission recently adopted for interexchange carriers and other non-LEC providers, and apply its CPNI rules to all independent LECs, not just the BOCs and GTE.

Respectfully submitted,

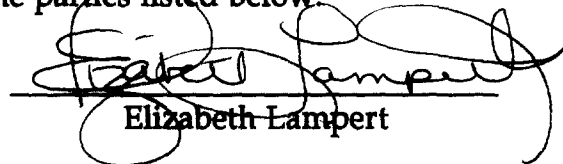
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Dated: April 11, 1994.

## **CERTIFICATE OF SERVICE**

I, Elizabeth Lampert, do hereby certify on this 11th day of April 1994, that I have served a copy of the foregoing document via first-class mail, postage prepaid, or via messenger to the parties listed below.



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